



**Attorney General  
Betty D. Montgomery**

November 8, 1996

*Via Overnight Mail*

Office of the Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Washington, D. C. 20554

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Re: *In the Matter of Implementation of  
the Local Competition Provisions  
in the Telecommunications Act of  
1996, The Public Utilities  
Commission of Ohio's Reply in  
Support of its Petition for  
Reconsideration, CC Docket No. 96-  
98*

**DOCKET FILE COPY ORIGINAL**

Dear Mr. Caton:

Enclosed please find the original and seventeen copies of the **In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, The Public Utilities Commission of Ohio's Reply in Support of its Petition for Reconsideration, CC Docket No. 96-98**, in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

Thank you for your assistance in this matter.

Respectfully submitted,

*Jodi J. Bair*  
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JJB/kja

cc: Common Carrier Bureau  
International Transcription Services, Inc.

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**Attorney General  
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November 8, 1996

*Via Overnight Mail*

Janice Myles  
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1919 m Street, N.W., Room 544  
Washington, D.C. 20554

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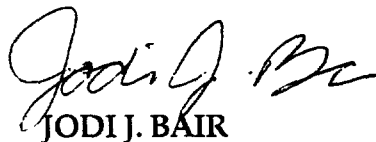
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98*

Dear Mr. Caton:

Enclosed please find the diskette containing Reply Comments from the Public Utilities Commission of Ohio for **In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996**, CC Docket No. 96-98, in the above-referenced matter. Please return a time-stamped copy to me in the enclosed stamped, self-addressed envelope.

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JJB/kja

cc: William Caton  
International Transcription Services, Inc.

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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In the Matter of )  
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**THE PUBLIC UTILITIES COMMISSION OF OHIO'S  
REPLY IN SUPPORT OF ITS  
PETITION FOR RECONSIDERATION**

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The Public Utilities Commission of Ohio (PUCO) respectfully submits this Reply to the Federal Communications Commission (FCC) in response to Oppositions filed relative to the PUCO's Petition for Reconsideration of the First Report and Order (Order) in this docket. The PUCO filed a Petition for Reconsideration and Clarification (Petition) with the FCC in this docket on September 30, 1996. Several parties filed Oppositions to the PUCO's position. In this Reply, the PUCO does not attempt to address the issues raised in all of the Oppositions filed, but address certain issues directly opposing the PUCO. Silence on any particular issue does not constitute agreement with or opposition to other positions. In this Reply, the PUCO addresses portions of the oppositions filed by National Cable Television Association (NCTA), Sprint Corporation (Sprint), Time Warner Communications (Time Warner), MCI and AT&T which directly opposed the PUCO's view on this issue. These parties focused on the issue raised by the PUCO in its Petition regarding the imposition of certain Section 251(c) requirements on all Local Exchange Carriers (LECs).

## **Imposition of Certain Section 251(c) Requirements on All LECs**

The PUCO requests that the FCC allow states the discretion of imposing certain section 251(c) obligations upon all LECs (not just ILECs). By acknowledging this flexibility for states, the PUCO believes that *all* carriers will be able to share the newest technology and utilize each others' efficient network. For the reasons stated below, the FCC should address this issue now and/or defer to the states. Waiting until after the new networks of non-ILECs are developed may render it financially and technically impractical for the FCC to later impose such requirements on NECs who have obtained market power. The PUCO contends that the 1996 Act does reserve such flexibility for states and does not prevent the imposition of additional, consistent obligations, particularly where such requirements advance the public interest.

NCTA and Time Warner do not agree with the PUCO and believe that LECs should not have any additional Section 251(c) obligations imposed upon them because the Act makes a distinction between LECs and ILECs. In addition, AT&T, MCI and Sprint argue that states may not impose any of the Section 251(C) obligations on all LECs. AT&T Opposition at 44; Sprint Opposition at 23; MCI Opposition at 43. Those oppositions will be addressed in this reply.

NCTA claims that the PUCO ignores the ILEC/LEC distinction set forth in section 251. NCTA Opposition at 6. This understanding of the PUCO's position is erroneous. The PUCO did not ignore the provisions set forth in 251, but explicitly recognized section 251(d)(3), which provides that the FCC shall not preclude the enforcement of any regulation of a state commission that establishes access and interconnection obligations of local exchange carriers consistent with the requirements of Section 251.

The PUCO stated in its Petition for Reconsideration that "the states should continue to regulate local phone service in accordance with the Federal Act." PUCO

Petition at 4. In addition, Section 251(h)(2) explicitly requires that when treating a comparable carrier as an incumbent, three requirements must be met: (A) such carrier occupies a position in the market for telephone exchange service within an area that is comparable to the position occupied by the ILEC; (B) such carrier has substantially replaced the incumbent local exchange carrier; and (C) such treatment is consistent with the public interest, convenience, and necessity and the purposes of this section. The PUCO is not advocating that parties "ignore" provisions of Section 251, rather, the PUCO is pointing out that the state should be able to impose additional duties upon all LECs as long as the duties are consistent with the Act.

NCTA goes so far as to state that allowing ILECs and LECs access to the advanced capabilities of hybrid fiber-coaxial (HFC) networks would run afoul of the statute. *Id.* at 7. Time Warner also claims that state authority and discretion in this area is not necessary to ensure good faith negotiations or to establish open markets. Time Warner opposition at 3-6. In other words, the cable industry advocates the sharing of the ILECs advanced telecommunications network as being procompetitive, while adamantly opposing the sharing of its extensive communications network.

By contrast, the Conference Report accompanying the 1996 Act explicitly provided that the purpose of the 1996 Act is "to provide for a pro-competitive, de-regulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening *all* telecommunications markets to competition." S. Conf. Rep. No. 104-458, 104th Cong., 2d Ses. (1996) at 1 (emphasis added). NCTA, a non-ILEC, wants to forbid other carriers from gaining access to NCTA's network, yet NCTA wants guaranteed access to ILECs' networks. What NCTA requests is contrary to the purpose of the 1996 Act and precludes an option that may well serve the public interest in a particular state.

NCTA relies heavily on a market power theory in its argument that no additional obligation should be imposed on LECs. NCTA claims that "[t]here is no basis for imposing upon CLECs obligation that Congress expressly decided to apply only to carriers with market power." NCTA Opposition at 6. According to NCTA, if a company has market power, it must open its network and if a company does not have market power there is no obligation to provide access to its network (no matter how advanced or efficient the LEC's system is). Of course, these large cable companies and IXC's possess significant market power over the ILEC's customers. Allowing states the ability to impose 251(c) requirements on the non-ILECs will open all markets to competition. If non-ILECs are allowed to avoid these obligations, the current system that the 1996 Act intends to change, may be perpetuated.

In the *First Report and Order*, the FCC stated that the state commissions or other interested parties may ask in the future that the Commission issue a rule, in accordance with section 251(h)(2), providing for the treatment of a LEC as an incumbent LEC. The FCC expressly "decline[d] to adopt specific procedures or standard for determining whether a LEC should be treated as an ILEC." Order at ¶1248. The PUCO asserts that in the absence of any FCC guidelines, states are able to regulate local phone service as long as the regulations are consistent with the Act. Sprint "agrees with [the] PUCO that the states are free, within the restraints of the Act, to regulate competitive entrants into local service in a manner that is consistent with the public interests." Sprint Opposition at 23. NCTA also recognized that "the statute does permit States to impose additional obligations that are consistent with the 1996 Act." NCTA Opposition at 8. These parties both agree with the PUCO's basic concept of additional consistent regulation, however these parties illogically draw the line when the additional consistent regulation may impose any obligations on them.

Section 251(d)(3) expressly preserves State interconnection policies that are consistent with the requirements of Section 251 and which do not substantially prevent implementation of the requirements of the 1996 Act. Clearly, imposing additional, consistent obligations is permissible and the express savings clause crafted by Congress serves to directly undermine the FCC's interpretation of Section 251(h)(2). The FCC's refusal to enact any guidelines at this time under Section 251(h)(2) should not prevent States from doing so.

The reason it is so important to address this issue now is that the new network infrastructure currently being deployed needs to be designed and constructed to accommodate the imposition of such additional obligations. Those network design decisions are being made now in response to the FCC's order in Docket 96-98. If "closed networks" are currently deployed by new entrants without regard to the possibility that they will sooner or later be required to unbundle or resell, for example, the FCC may find it impractical, if not impossible, to later impose requirements of unbundling and interconnection. The PUCO has frequently faced issues in regulation of telecommunications where the industry claims that the fulfillment of proposed obligations is technically infeasible. That "defense" will more likely be raised and will become increasingly strengthened through the passage of time, and once these networks have been designed and made operational.

If the FCC does not allow for this possibility now, it will not be able to go back and "unscramble the eggs" without a huge expense and practical difficulties. Instead, the FCC should recognize that states may be in the best position to make this policy judgment in their respective jurisdictions. The critical time for imposing additional, consistent obligations is now.

AT&T incorrectly asserts that the PUCO has "request[ed] that the Commission broadly reconsider and withdraw in its entirety its rule under 251(h)(2)." AT&T

Opposition at 44. The PUCO made no such request in its Petition. The PUCO requested that the FCC allow states the discretion to impose obligations on non-ILECs that are consistent with section 251(h)(2). In paragraph 1248 of the *First Report and Order*, the FCC declined "to adopt specific procedures . . . for determining whether a LEC should be treated as an incumbent LEC." Order at ¶1248. There is no procedure that the PUCO could ask to be withdrawn. AT&T also falsely concludes that the obligations that the PUCO wishes to impose on non-ILECs "would be inconsistent with the statute." AT&T Opposition at 44. As stated in the PUCO's Petition, additional stringent obligations on LECs can be consistent with the Act. AT&T's assumption is incorrect that any additional obligations are necessarily inconsistent. The FCC should acknowledge that the 1996 Act allows states to impose additional obligations that are consistent with the 1996 Act.



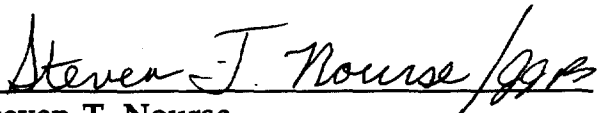
## CONCLUSION

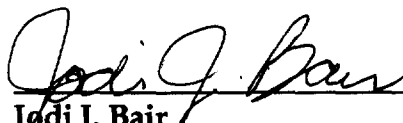
Accordingly, the PUCO respectfully requests that the FCC clarify and reconsider its Final Report and Order in accordance with the PUCO's Petition for Reconsideration.

Respectfully submitted,

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